

**JUDICIARY
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NO. 642 OF 2015**

BETWEEN

KANANJI CHIPOJOLA PLAINTIFF

AND

PRIME INSURANCE COMPANY LIMITED DEFENDANT

CORAM: THE HONOURABLE JUSTICE KENYATTA NYIRENDA
Mrs. Doreen Nkangala, Court Clerk

ORDER

Kenyatta Nyirenda, J.

The present proceedings were commenced on 18th June 2016. The Plaintiff seeks damages in respect of personal injuries that he sustained in a road accident involving motor vehicle registration number MN 2543 Toyota Hiace.

The Defendant filed a Defence and parties thereafter attended mediation which did not bear fruits. Hearing of the case was set for 8th May 2017. Hearing failed to take place because the Plaintiff was not available. The Court then adjourned hearing of the case to a date to be fixed.

Neither party has since then taken any step in these proceedings. Order 12, r.56, of the Court (High Court) (Civil Procedure) Rules [Hereinafter referred to as "CPR"] comes into play where there is such non-action. The provision is couched in the following terms:

"The Court may strike out a proceeding without notice, if there has been no step taken in the proceedings for 12 months."

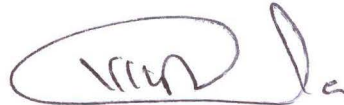
In the present proceedings, more than 16 months have elapsed without the Plaintiff taking steps to prosecute this case. This is clearly an abuse of court process. Public policy requires that litigation must come to an end. There should be a point where matters should be closed. The delay here is so prolonged that there is a substantial

risk that a fair trial of the issues will be no longer possible. When this stage has been reached, the public interest in the administration of justice demands that the action should not be allowed to proceed.

Allowing further prosecution of the action would be prejudicial not only to the interests of the Defendant but it would also be detrimental to good administration in general and to good administration of justice in particular: see **R. v. Dairy Produce Quota for Tribunal for England and Wales, ex p. Caswell** [1989] 1 W.L.R 1089. In short, the delay herein is intolerable. "*They have lasted so long as to turn justice sour*", to use the words of Lord Denning M.R. in **Allen v. Sir Alfred McAlpine & Sons Ltd** [1968] 1 ALL ER 543. In the premises, I have no option but to strike out the proceedings herein. It is so ordered.

In light of the foregoing and by reason thereof, the Registrar's attention is drawn to Order 12, r.58, of CPR.

Pronounced in Court this 25th day of September 2018 at Blantyre in the Republic of Malawi.



Kenyatta Nyirenda
JUDGE